

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SHANNON SPENCER, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

RXO, INC., a foreign profit corporation; RXO
LAST MILE, INC., a foreign profit
corporation; RXO CORPORATE
SOLUTIONS, LLC, a foreign limited liability
company; RXO FREIGHT FORWARDING,
INC., a foreign profit corporation; RXO
MANAGED TRANSPORT, LLC, a foreign
limited liability company; and DOES 1-20,

Defendants.

NO. 2:23-cv-01760-TSZ

JOINT STATUS REPORT AND
DISCOVERY PLAN

Pursuant to Local Civil Rule 26(f) and Federal Rule of Civil Procedure 26(f), Plaintiff Shannon Spencer (“Plaintiff”), and Defendants, RXO, Inc., RXO Last Mile, Inc., RXO Corporate Solutions, LLC, RXO Freight Forwarding, Inc., and RXO Managed Transport, LLC, (collectively, the “RXO Defendants” and together with Plaintiff, the “Parties”), by and through their counsel, submit the following Joint Status Report and Discovery Plan.

1. Statement of the nature and complexity of the case:

Plaintiff’s Statement: Plaintiff brings this putative class action against the RXO

Defendants, alleging that the RXO Defendants failed to disclose in each posting for each Washington job opening, the wage scale or salary range and a general description of all of the benefits and other compensation to be offered to the hired applicant. RCW 49.58.110(1). Plaintiff believes that this case is a non-complex class action.

Defendant's Statement: The RXO Defendants removed this action from King County Superior Court to this Court on November 17, 2023. The RXO Defendants: (i) deny that they have, in any way, violated any applicable laws, including, but not limited to, RCW 49.58.110; and (ii) have pending before the Court a Motion to Dismiss Plaintiff's claims.

The RXO Defendants maintain that should the Court deny the RXO Defendants' Motion to Dismiss, in whole or in part, and if the Court does not certify a class or collective action, this matter will be of moderate complexity, as it will be limited to Plaintiff's individual claims and involve the interpretation of a law that took effect in January, 2023.

If the Court proceeds to certify a class or collective action, this matter may be materially more complex. The Parties disagree as to the appropriateness of the proposed class and collective action. Discovery and briefing regarding certification and notice issues as well as the merits of the class and collective allegations could involve significant time and expense to the Parties, and considerable involvement of the Court.

2. Proposed deadline for joining additional parties: The Parties do not anticipate joining additional parties.

3. Assignment of the Case to a Magistrate Judge: The Parties do not consent to a Magistrate Judge being assigned to this case.

4. Initial disclosures pursuant to FRCP 26(a)(1): The Parties initial disclosures are to be exchanged on February 12, 2024, as per the December 12, 2023, Order Regarding Initial Case Deadlines (Dkt. 10). The Parties wish to alert the Court that there are similar cases that have been reassigned to Judge Rothstein. Some of these cases have pending motions to dismiss. The cause numbers are: 2:23-cv-01784, 2:23-cv-01787, 2:23-cv-01757, 2:23-cv-01742, 2:23-cv-

01740, 2:23-cv-01806, 2:23-cv-01793, 2:23-cv-01680, 2:23-cv-1666, 2:23-cv-01737, 2:23-cv-01696, 2:23-cv-01723, and 2:23-cv-01084.

5. Discovery Plan:

a. **Subject, Timing, and Potential Phasing of Discovery:**

i. Plaintiff does not currently anticipate asking the Court for any special orders or relief with respect to discovery, but reserves the right to do so.

ii. The RXO Defendants assert that discovery is needed on all issues (liability, class suitability, defenses, and damages) raised in Plaintiff's Complaint, and discovery should be conducted in phases. Initially, discovery should be limited to issues related to the individual claims of the named Plaintiff, the RXO Defendants' defenses to those claims, and the appropriateness of a class or collective action. Class-wide discovery on issues unrelated to the appropriateness of a class or collective action should not be conducted unless and until a broader action is authorized by the Court. If a class or collective action is authorized by the Court, the Parties should supplement their Initial Disclosures on a mutually agreed upon date to encompass information relevant to those allegations.

b. **Electronically Stored Information ("ESI"):** The Parties believe that this case will involve limited amounts of Electronically Stored Information ("ESI") and if necessary, the Parties will adopt the Model Agreement Regarding Discovery of ESI. The Parties are currently unaware of any issues regarding disclosure of electronically stored information.

c. **Privilege Issues:** Not considering the potential class claims, the primary documents in this case will be Plaintiff's application files and other

documentation and communication relating to Plaintiff's application for employment with RXO Last Mile, Inc. The Parties do not expect any unique or extensive claims of privilege.

d. **Proposed Limitations on Discovery:** As discussed in Section 5(a)(ii), *supra*, while Plaintiff disagrees, the RXO Defendants believe that discovery should be conducted in phases dependent upon whether the Court authorizes a class or collective action. Therefore, the RXO Defendants respectfully submit that discovery should be limited in the first instance to issues related to the individual claims of the named Plaintiff, the RXO Defendants' defenses to those claims, and the appropriateness of a class or collective action, unless and until the Court authorizes a class or collective action in this matter.

e. **Discovery Related Orders:** The Parties intend to file a proposed protective order in relation to certain confidential, proprietary, and/or private documents and information. The Parties do not currently request the Court to enter any other orders under FCRP 26(c) or Local Rule CR 16(b) and (c).

6. Local Civil Rule 26(f)(1):

a. **Alternative Dispute Resolution:** The Parties will attempt to negotiate informally and if that is not successful, the Parties are open to considering various alternative dispute resolution techniques, but have not committed to a particular method at this stage.

b. **Related Cases:** The Parties are aware of related cases (*see* Section 4, *supra*).

c. **Phasing of Motions:** The Parties agree that motions should be conducted pursuant to Federal Rules of Civil Procedure, and see no need currently for any protocols regarding the phasing of motions.

d. **Preservation of Discoverable Information:** The Parties are not aware of any issues related to the preservation of discoverable information of the scope of the preservation obligation.

e. **Model Protocol for Discovery of ESI:** The Parties believe that this case will involve limited amounts of Electronically Stored Information (“ESI”) and if necessary, the Parties will adopt the Model Protocol Regarding Discovery of ESI. The Parties are currently unaware of any issues regarding disclosure of electronically stored information.

f. **Alternatives to Model Protocol:** N/A

7. **Date Discovery Can Be Completed:** The Parties believe that discovery regarding the named Plaintiff’s individual claims and appropriateness of class and collective status can be completed 120 days before trial. If any class or collective action is authorized in this matter, the Parties believe that a discovery completion date should be established that allows the Parties a minimum of 120 days from the date all participants in any such action have been determined to conduct class-wide discovery.

8. **Class Certification Motion:** The Plaintiff will file a motion for class certification. The parties propose the following briefing schedule for class certification to be noted for hearing on August 7, 2024:

a. Plaintiff’s Motion Due: **July 2, 2024**

b. Defendant’s Response Due: **July 31, 2024**

c. Plaintiff’s Reply Due: **August 7, 2024**

9. **Need for bifurcation:** The Parties do not believe bifurcating liability or damage is necessary for this matter.

10. **Trial Date:** The Parties believe the case will be ready for trial in August, 2025.

11. **Trial Type:** Plaintiff filed a Jury Demand on November 17, 2023.

1 **12. Length of Trial:** The Parties believe trial of this case will take up to 5 days. If a
2 class or collective action is authorized in this matter, however, the length of trial will turn on
3 factors that are not yet clear, such as how matters of proof will be handled. Nevertheless, based
4 on current information, the Parties anticipate that class claims can be tried in approximately twenty
5 (20) trial days.

6 **13. The names, addresses, and telephone numbers of all trial counsel:**

7 *Attorneys for Plaintiff:*

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14. Trial Counsel Scheduling Conflicts: N/A

1 **15. Corporate Disclosure Statement:** Defendants filed their Corporate Disclosure
2 Statement on November 17, 2023 (Dkt. 4).

3
4 Dated this 12th day of February, 2024.

5 EMERY REDDY, PLLC

6 K&L GATES LLP

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2024, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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Dated this 12th day of February 2024, at Seattle, Washington.

/s/ Jennifer Chong
Jennifer Chong, Legal Assistant
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